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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
Civ. No. 03-4096

ELIZABETH RIDEOUT

v.

*Notice
In hand
3/3/04
n.g.*

BOSTON CAB DISPATCH, INC., EDWARD J. TUTUNJIAN,
VICKY'S INC., EJT MANAGEMENT, INC.,
C&T MANAGEMENT, INC., BOSTON CAR SERVICE, INC., and
MOHAMED FARAH

MEMORANDUM OF DECISION AND ORDER ON
PLAINTIFF'S MOTION FOR TRUSTEE PROCESS
AND TO ATTACH ASSETS OF CERTAIN NAMED DEFENDANTS

This is an action arising from a tragic accident occurring on March 19, 2003 at Logan Airport in Boston. The accident occurred when a taxicab driver, defendant Mohamed Farah, exited his vehicle without placing the gear in park. When the vehicle began to roll forward, Farah jumped back into the taxi and, in an attempt to apply the brakes, mistakenly hit the accelerator. The cab careened into the plaintiff and another individual, Yuri Wiseman, who were standing on the sidewalk nearby. Wiseman was killed and the plaintiff suffered serious injuries which have to date required that she undergo seven surgical operations. Together with \$750,000 in medical expenses already incurred, the plaintiff is likely to incur medical bills which exceed \$2 million.

The case is now before the Court on the plaintiff's Motion to Attach certain real and personal property of four of the named defendants: EJT Management, Inc. ("EJT Management"), Boston Cab Dispatch, Inc. ("Boston Cab Dispatch"), Vicky's Inc. ("Vicky's") and Edward Tutunjian individually ("Tutunjian"). Plaintiff also seeks to attach by trustee

process certain bank accounts in the names of those four defendants.

In order to prevail on her Motion, the plaintiff must convince this Court that she has a reasonable likelihood of obtaining judgment against these defendants in an amount equal to the amount requested, over and above any liability insurance available to satisfy the judgment. See Rule 4.1(c) and Rule 4.2(c), Mass.R.Civ. P. The only known liability insurance from which any judgment could be satisfied is a policy held by defendant Vicky's, which has a limit of \$20,000. For the following reasons, I conclude that the Plaintiff's Motion must be Allowed.

There are two central issues raised by this motion. First, can any one of the four defendants be held liable for Farah's conduct, or is he instead an independent contractor such that no one else has legal responsibility for his negligent acts? Second, should all four defendants be treated as one on the grounds that the plaintiff will be able to pierce the corporate veil? This Court answers these questions with due regard to the standards that apply at this preliminary stage of the proceedings: that is, the determination is not whether plaintiff will certainly prevail but whether, considering the strength of her case against Farah, the absence of liability insurance to cover any judgment, and the seriousness of the injuries that plaintiff has suffered, she has some likelihood of obtaining a judgment in a large amount against these defendants. I conclude that plaintiff has satisfied her burden such that she is entitled to the relief requested.

The plaintiff's case is perhaps the strongest against defendant Vicky's. Vicky's leased the taxicab to Farah and owned the taxi medallion which authorized Farah to operate as a cab driver. Although Vicky's maintains that Farah was an independent contractor, its ownership of the taxi medallion subjects it to certain nondelegable responsibilities. As the Court held in Moussa v. Abdel-Kader, 12 Mass.L.Rptr. 21, 2000 WL 991720 (2000), the "company that owns

the cab and holds the medallion controls the cab [so that it] is not unfair to require that company, if it delegates control of the cab to another...to pay any liability if it delegates unwisely." In addition, as matter of tort law, where an individual is engaged in activity which can only be performed pursuant to the license or franchise granted by a public authority, then the entity or individual who holds the license may be held liable for negligence occurring in the performance of that activity. See Barry v. Keeler, 322 Mass.114, 126-127 (1947) (relying on Restatement Torts §428). "The rationale for the rule is that it is considered contrary to public policy to permit one engaged in such an activity to delegate his responsibility to others." Id at 127; see also Texeira v Cab Three, Inc., 1994 WL 413034, 1994 Mass.App.Div. 154 (holding that the owner of a taxi medallion owes that duty of care required of a common carrier to all passengers of the taxi). Although the plaintiff was not herself a passenger of the cab which struck her, this Court is convinced that there is a viable basis for finding Vicky's responsible for Farah's negligence in driving the cab, since his authority to operate the cab was directly dependent on the taxi medallion which belonged to Vicky's.

With respect to whether the plaintiff will be able to impose liability on any other defendant, that depends on whether she will be able to unearth enough evidence to convince the trier of fact that the separate corporate entities should be disregarded, pursuant to the factors set forth in My Bread Baking Co. v. Cumberland, 353 Mass. 614 (1968). Those factors are: 1) common ownership; 2) pervasive control; 3) confused intermingling of business activity assets or management; 4) thin capitalization; 5) nonobservance of corporate formalities; 6) absence of corporate records; 7) no payment of dividends; 8) insolvency at the time of the litigated transaction; 9) siphoning away of corporate assets; 10) non functioning of officers and directors;

11) use of corporation for transactions of dominant shareholders; and 12) use of the corporation in promoting fraud. Admittedly, the evidence that the plaintiff has been able to muster to date is thin, but that is not through any fault of her own: defendants have thus far failed to answer discovery requests made in September 2003 which pertain to these issues.¹ Moreover, in opposing this motion, defendants offer only a two page affidavit of Tutunjian which does not directly address these issues either (except to say that Vicky's files its own tax returns). One inference that could be drawn from this is that the evidence which will eventually come to light in discovery will not be favorable to the defendants. Nevertheless, evidence which has surfaced in other litigation reveals the following.²

Tutunjian is the sole stockholder, officer and director of various companies which make up the enterprise known as Boston Cab. Those companies include the defendant Boston Cab Dispatch and the defendant Vicky's. According to deposition testimony of Tutunjian, these various cab companies are managed and run as a single enterprise, with EJT Management at the top. Specifically, it is EJT Management which reviews applications submitted by those interested in becoming drivers. It checks applicants' driving records, and assists drivers in obtaining work cards from police headquarters, with the cards themselves stating that the individual applicant will be driving for EJT Management. Additionally, EJT Management is

¹At the hearing on this Motion on February 26, 2004, this Court ordered that those responses be made and documents produced within ten days.

²Specifically, Tutunjian and other associated with Boston Cab have given depositions testimony in the matter of Makrokanis v. Locust Cab, Inc., et al., Civ. No. 98-4172. The Court (Doerfer, J.) denied a request for a protective order in that action which would have foreclosed inquiry into the relationship between the various cab companies. Judge Doerfer noted that the inquiry was appropriate since there appeared to be a "substantial relationship" between the named defendant in that case, Locust Cab, and EJT Management.

responsible for repairing taxis that are owned by these various companies, fills them up with gasoline, maintains them on a regular basis, and allows drivers to use a car wash owned by EJT Management, all free of charge.

With regard to whether corporate formalities are observed, Tutunjian has testified that, although he is sole officer and director, he has not participated in any corporate meetings. See Deposition of Edward Tutunjian ("Tutunjian Depo.") pp. 27-28, attached as Exhibit G to Plaintiff's Memorandum. When asked about EJT Management's corporate records, Tutunjian has professed ignorance, referring those questions to the single accounting firm which also handles the records for all the cab companies under EJT Management. Tutunjian Depo. pp. 40-43. There are no written agreements between the various companies and EJT Management which spells out what work EJT Management performs for them, and whatever services are performed are done without charge. Although Tutunjian has stated that at least some of the companies have their own bank accounts, it also appears that income received by the different cab companies is deposited into EJT Management bank accounts, from which the companies' expenses are also paid.³ The garage which services all the cabs owned by the various companies is located at 60 Kilmarnock Street, in a building which Tutunjian owns. EJT Management does not pay rent to Tutunjian for this garage. Finally, the fact that the only known liability insurance for these taxi companies is a Vicky's self-insurance policy providing a maximum of \$20,000 per person per accident supports the inference that these companies are thinly capitalized.

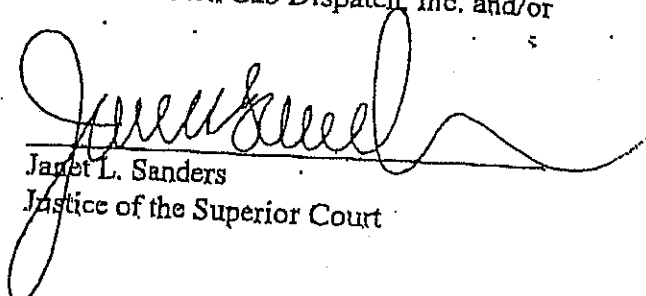
In Dujon v. Williams, 1996 WL 402344 (Massachusetts Superior Court 1996), facts

³As Tutunjian described it, EJT Management "collects the money, counts the money [and] deposits the money." Tutunjian Depo. p. 36.

similar to the above combined with other facts were sufficient to convince the court (Botsford, J.) that a cab association and several of its member corporations were actually operated as a single entity. Accordingly, the court held the association as well as its sole stock holder liable for the tortious acts of one of its cab company members, relying on the analysis set forth in My Bread Baking Co., supra. In the instant case, I conclude that plaintiff has shown a likelihood of prevailing against the defendants named in this motion which is sufficiently strong to justify granting the relief requested. Moreover, whatever judgment plaintiff will obtain (and certainly, the claim that she was injured as a result of negligence is strong), it is likely to be a large one. The request for attachments in the amount of \$5 million is not unreasonable.

Accordingly, for all the foregoing reasons, the plaintiff's Motion is ALLOWED and it is hereby ORDERED that:

- 1) An attachment be imposed on all taxi medallions owned by defendant Vicky's Inc. in the amount of \$5 million;
- 2) A writ of attachment issue in the amount of \$5 million against real property owned by Tutunjian located at 60 Kilmarnock Street in Boston, Massachusetts.
- 3) An attachment by trustee process issue as to certain identified bank accounts held in the name of Tutunjian individually, EJT Management, Inc. Boston Cab Dispatch, Inc. and/or Vicky's Inc. in the amount of \$5 million.


Janet L. Sanders
Justice of the Superior Court

Dated: March 1, 2004